



TEXAS MINING AND RECLAMATION ASSOCIATION
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February 6, 2006

NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building

RE: NEPA Task Force Initial Findings and Draft Recommendations

Dear Sir or Madam:

The Texas Mining and Reclamation Association (TMRA) appreciates this opportunity to submit comments on the "Initial Findings and Draft Recommendations" of the House Committee on Resources Task Force (Task Force) on Improving and Updating the National Environmental Policy Act (NEPA). TMRA agrees with the National Mining Association's (NMA) position that the findings and draft recommendations of the Task Force represent an important step forward in modernizing a process to improve the development of our natural resources and supports the comments set out in the NMA letter.

Introduction

TMRA is a state organization comprised of approximately 100 mining, electric, utility, and equipment supply companies that conduct business in Texas. TMRA supports coordinated, rational, and consistent federal, state, and local policies to assure the economic recovery of the state's minable resources while protecting and enhancing the environment.

TMRA's members play a vital role in the Texas economy. Mining provides over 34 billion annually to our state and accounts for more than 50 percent of the local tax base for some of our state's rural communities. The Texas lignite mining industry alone spends in excess of \$100 million each year on land reclamation and protection of water, air quality and archeological resources, and reclaims land for cattle grazing, crops, commercial timber, wildlife habitat, wetlands and recreational use. Just as one example of this stewardship, TMRA members plant more than two million trees annually on reclaimed mine land. TMRA members have a strong environmental ethic and have received numerous state and national awards for their environmental programs.

Comments

TMRA's comments focus on these Task Force draft recommendations:

1. NEPA's interaction with other federal environmental laws (Group 9).
2. Delays in the NEPA review process (Group 1).
3. Clarification of the alternatives analysis (Group 5).
4. Improving federal agency coordination (Group 6).
5. Addressing litigation issues (Group 4).

1. NEPA's interaction with other Federal Environmental Laws - Recommendation 9.1: Council on Environmental Quality (CEQ) study of NEPA's interaction with other Federal environmental laws.

TMRA supports the Task Force's acknowledgement that duplication and overlap may occur in the environmental review process, and understands that the Task Force has recommended that a study be commissioned to evaluate NEPA in the context of other federal environmental laws. Like NMA, TMRA believes that the CEQ study will demonstrate the existence of unnecessary, duplicative, and other overlapping environmental permitting procedures, especially in the context of mining operations.

The NMA notes that similar environmental performance and reclamation standards are embedded in the Federal Land Management and Policy Act, the Surface Mining Control and Reclamation Act, and the Forest Service Organic Act, and such laws are supplemented by additional permit review requirements under the Clean Air Act (CAA), Clean Water Act (CWA), Endangered Species Act, and Safe Drinking Water Act. TMRA agrees with NMA that, collectively, these laws and corresponding regulations provide a functional equivalent to the NEPA review process and agrees that a functional equivalence exception should be created to allow federal agencies to better focus their efforts on effectively and responsibly developing our nation's natural resources. (See TMRA's Supplemental Comments filed with The Honorable Cathy Morris dated September 1, 2005.)

2. Delays in the NEPA Process - Recommendation 1.2: Amend NEPA to add mandatory timelines for the completion of NEPA documents.

TMRA supports mandatory timelines for the completion of NEPA documents. According to NMA, the National Academy of Sciences acknowledged that NEPA reviews are time consuming, especially for the hardrock mining industry. Codifying mandatory timelines for the completion of NEPA documents would provide a time certain period for the regulatory review process and would improve the operational decision making ability of permit applicants. Administrative delays provide no commensurate environmental benefits; therefore, TMRA also supports the NMA's recommendation that the timeframes for an Environmental Impact Statement (EIS) or Environmental Assessment (EA) be reduced.

3. Clarification of the alternatives analysis (Group 5) – Recommendation 5.1: Amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those that are economically and technically feasible.

The resources of federal agencies and project proponents are wasted when alternatives not capable of being implemented are considered and receive unnecessarily extensive evaluation. TMRA believes NEPA should be amended to require that the “reasonable alternatives” analyzed be limited to those that are economically and technically feasible.

4. Improving federal agency coordination (Group 6) - Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with stakeholders.

TMRA supports the efforts by the Task Force to ensure that constructive dialogue among stakeholders is maintained and, like the NMA, believes that communication is necessary for improving the NEPA process. As explained in the NMA letter, TMRA is supportive of a reformation provision that would prohibit persons who did not participate from the outset of the environmental review process from participating mid-way through the review process, thereby obstructing an agency’s ability to timely complete and approve relevant NEPA documents. TMRA also supports deadlines for inter-agency consultations because the deadlines would provide an incentive for meaningful federal agency participation. Finally, TMRA supports the Task Force’s authorization of a study to evaluate current federal agency NEPA staffing issues, and notes that federal agencies must have the staffing, expertise, and administrative resources to complete the NEPA review process in a timely and efficient manner.

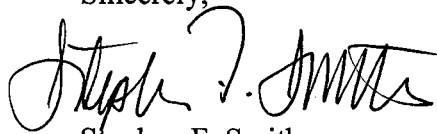
5. Addressing litigation issues (Group 4) - Recommendation 4.1: Amend NEPA to create a citizen suit provision.

TMRA does not support amending NEPA to include a citizen suit provision, and supports the comments of the NMA on this issue.

Conclusion

TMRA appreciates the opportunity to state the position of its members on the draft recommendations of the Task Force for updating and improving the NEPA process. TMRA will continue to work with the NMA and the Task Force in developing the final report and is available to address any questions or concerns that it may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen F. Smith", with a stylized flourish at the end.

Stephen F. Smith
Executive Director